

IBA Code of Professional Conduct for Counsel before the International Criminal Court

INTERNATIONAL BAR ASSOCIATION*

On July 1, 2002, the Rome Statute¹ (Statute) entered into force, historically establishing the International Criminal Court (ICC), a positive and important step for international justice. This Court will be truly international, not only in its reach and in the nationalities of those facing trial before it, but also in terms of the nationality of counsel before the Court. Counsel appearing before the Court will come from diverse legal systems, both common and civil law, and will be accustomed to their own national standards. Adopting a code of professional conduct (Code) will ensure that expectations for conduct are clear and uniform and that all counsel appearing before the ICC will be held to the same standards, a necessary element of a fair trial.

The need for a Code governing professional conduct was recognised in the initial stages. The Statute and the Rules of Procedure and Evidence² (Rules) draw on the experience of the two ad hoc criminal tribunals of the former Yugoslavia and Rwanda respectively, as well as criminal jurisprudence and practice and procedure from a multitude of jurisdictions. Both documents reflect core principles deemed necessary for the effective and just functioning of an international criminal tribunal. It is significant, therefore, that Rule 8 of the Rules of Procedure and Evidence provides for the promulgation of a Code of Professional Conduct for Counsel before the ICC and Rule 22(3) makes counsel subject to that Code.

Under Rule 8(1), it is the Presidency which has responsibility for drawing up the draft Code, based on a proposal by the Registrar and after having consulted with the Prosecutor.-

*In its role as a dual membership organisation, comprising 16,000 individual lawyers and 194 Bar Associations and Law Societies, the International Bar Association (IBA) influences the development of international law reform and shapes the future of the legal profession. Its Member Organisations cover all continents and include the American Bar Association, the German Federal Bar, the Japan Federation of Bar Associations, the Law Society of Zimbabwe, and the Mexican Bar Association.

Grouped into three Sections—Business Law, Legal Practice, and Energy & Natural Resources Law—more than eighty specialist Committees provide members with access to leading experts and up to date information, as well as top-level professional development and network-building opportunities through high quality publications and world-class Conferences. The IBA's Human Rights Institute works across the Association, helping to promote, protect, and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

1. U.N. Doc. A/CONF.183/9*.

2. PCNICC/2000/1/Add.1.

The Registrar, under Rules 8(1) and 20(3) must conduct consultations with independent representative bodies of counsel and legal associations in the development of the Code. On completion of the draft, Rule 8(2) provides that it be submitted to the Assembly of States Parties for adoption.

In line with the mandatory consultative provisions of the Rules, the International Bar Association (IBA) was invited to facilitate the preparation of a draft Code for submission to the Registrar. As a global legal organisation with a strong commitment to human rights, the IBA keenly supports the establishment of the ICC and was delighted to help prepare the draft. Aiming to ensure that the draft reflected the views of the international legal community, the IBA embarked on this task drawing on the expertise of its extensive membership and member organisations.

Over the past year, the IBA has undertaken a rigorous and transparent drafting process, overseen by an Advisory Panel³ comprised of experts in the fields of professional conduct and ethics, common and civil law traditions, and international criminal law. In 2002, the Panel worked from January to May to compile a draft, which was then widely circulated for comment. The draft Code, available in English, Spanish, and French, was sent to the IBA's 183 Bar Associations and Law Societies, international and regional lawyers' associations, the Assembly of States Parties, interested lawyers, and non-governmental organisations. A presentation of the Code was also made at the ICC PrepCom in July 2002. Additionally, the Code was posted on appropriate Web sites.

From the comments received, four key areas of contention were identified that formed the basis of discussions at a two-day IBA sponsored Conference⁴ held in London in November 2002. With generous funding from the UK Government and the General Council of the Bar of England and Wales, participants from twenty jurisdictions participated in the Conference.

The third and final phase involved the incorporation of the comments and conclusions from the London meeting into a final draft for submission to the Acting Registrar.

Given the wide circulation of the Code and the diversity of the sources of comments, it is extremely pleasing that consensus was reached on most issues. However, a small number of points remain unresolved. The areas of continuing debate form the basis of a commentary that accompanies the draft Code.

As with the Statute and the Rules, the final draft Code embodies experience while recognising the unique nature of the ICC. It is intended as an organic document that will respond to developments in practice at the Court. The final Code, submitted to the ICC on February 20, 2003, thus reflects the core principles underpinning the highest standards of legal practice demanded by the Rules of the Court, justice, and most importantly, by lawyers themselves. It is anticipated that the Code will contribute to the smooth running of the Court.

3. The Advisory Panel comprised: Abboud Al-Sarraj, Syria; Jan Borgen, Norway; Allison Clare, England; Sylvia de Bertadano, England; Silvia A Fernandez de Gurmendi, Argentina; Desmond Fernando PC, Sri Lanka; Steven Kay QC, England; Henrietta Mensa-Bonsu, Ghana; Ramón Mullerat OBE, Spain; Edward M Ngubane, South Africa; and Heinz Weil, Germany.

4. Judge Finn Lynghjem, Norway, chaired the Conference.